

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LENIN GARCIA,
CDCR #J-12590,

Plaintiff,

vs.

D. SMITH, et al.,

Defendants.

Case No.: 3:10-cv-2433-JAH-MDD

**ORDER GRANTING MOTION
TO APPOINT PRO BONO
COUNSEL PURSUANT TO
28 U.S.C. § 1915(e)(1) AND
S.D. CAL. GENERAL
ORDER 596**

[ECF No. 182]

Plaintiff, a prisoner currently incarcerated at California State Prison in Corcoran, California, is proceeding pro se and in forma pauperis in this civil rights pursuant to 42 U.S.C. § 1983 (ECF Nos. 3, 4).

On February 28, 2014, the Court granted in part and denied in part Defendants' Motion for Summary Judgment pursuant to FED. R. CIV. P. 56 (ECF No. 89). Remaining to be tried are Plaintiff's claims of conspiracy as to Defendants Chance, Moore, and Vasquez, and his claims of retaliation and excessive force as to Defendant Chance alone. *See* ECF No. 87 at 23; ECF No. 89 at 5-6; ECF No. 155 at 12.

While there is no right to counsel in a civil action, a court may under "exceptional circumstances" exercise its discretion and "request an attorney to represent any person

1 unable to afford counsel.” 28 U.S.C. § 1915(e)(1); *Palmer v. Valdez*, 560 F.3d 965, 970
2 (9th Cir. 2009). The court must consider both “the likelihood of success on the merits as
3 well as the ability of the [Plaintiff] to articulate his claims pro se in light of the complexity
4 of the legal issues involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.
5 1983)).

6 In order to provide a mechanism for requesting pro bono counsel under the
7 circumstances prescribed by 28 U.S.C. § 1915(e)(1), this Court has established a “Plan for
8 the Representation of Pro Bono Litigation in Civil Case filed in the Southern District of
9 California,” which was adopted by the Judges of this District on August 3, 2011, pursuant
10 to S.D. Cal. Gen. Order No. 596.

11 The Pro Bono Plan specifically provides for appointment of pro bono counsel “as a
12 matter of course for purposes of trial in each prisoner civil rights case where summary
13 judgment has been denied.” *See* S.D. Cal. Gen. Order 596. Plaintiff is a prisoner whose
14 civil rights claims have survived Defendants’ Motion for Summary Judgment, and the
15 Court concluded, during the pretrial proceedings which have followed, that “the ends of
16 justice will be served” by the appointment of pro bono counsel under the circumstances
17 presented in this case. *Id.*

18 Thus, pursuant to both 28 U.S.C. § 1915(e)(1) and General Order 596, the Court has
19 now, with the helpful assistance of the San Diego Volunteer Lawyer Program, Inc.,
20 identified and selected volunteer counsel who has graciously offered to represent Plaintiff
21 on a pro bono basis during the course of all further proceedings before this Court. *See* S.D.
22 Cal. General Order No. 596.

23 CONCLUSION

24 Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion [ECF No. 182] and
25 **APPOINTS** Randy Scott Grossman, SBN 177890, and Peter Jordan Mazza, SBN 239918,
26 of Jones Day, 12265 El Camino Real, Suite 200, San Diego, California, 92130, as Pro Bono
27 Counsel for Plaintiff.

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1 Pursuant to S.D. CAL. CIVLR 83.3(f)(2), Pro Bono Counsel must file, within fourteen
2 (14) days of this Order, if possible, a formal written Notice of Substitution of Attorney
3 signed by both Plaintiff and his newly appointed counsel. The Court will consider the
4 Notice of Substitution approved upon filing, and Pro Bono Counsel will thereafter be
5 considered the attorneys of record for Plaintiff for all purposes during further proceedings
6 before this Court and in this matter only. *See* S.D. CAL. CIVLR 83.3(f)(1), (2).

7 The Court **DIRECTS** the Clerk of the Court to serve Mr. Grossman and Mr. Mazza
8 with a copy of this Order at the address listed above upon filing, *see* S.D. CAL. CIVLR
9 83.3(f)(2), and further **DIRECTS** the Clerk to serve a courtesy copy of this Order upon
10 Parisa Ijadi-Maghsoodi, Pro Bono Manager and Supervising Attorney, San Diego
11 Volunteer Lawyer Program, Inc., 707 Broadway, Suite 1400, San Diego, CA 92101.

12 All parties are advised that once Pro Bono Counsel has entered an appearance for
13 Plaintiff, the Court intends to set a status conference to discuss pending and potential future
14 hearing dates and trial schedules.

15 **IT IS SO ORDERED.**

16
17 DATED: June 9, 2016


HON. JOHN A. HOUSTON
United States District Judge